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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PALMER/SIXTH STREET PROPERTIES, L.P., a California limited partnership; and GEOFFREY PALMER, an individual.

CASE NO. CV 07-01346CAS(FMOx)

Honorable Christina A. Snyder
Courtroom 5

Plaintiffs

VS.

CITY OF LOS ANGELES, a
California Municipal Corporation

Defendant

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
DECLARATORY AND
INJUNCTIVE RELIEF**

1. INVERSE CONDEMNATION/
TAKING (U.S. CONST. 5TH
AMEND.)
 2. VIOLATION OF EQUAL
PROTECTION (U.S.
CONST. 14TH AMEND.)
 3. VIOLATION OF DUE
PROCESS (U.S. CONST.
14TH AMEND.)
 4. VIOLATION OF CIVIL
RIGHTS UNDER 42 U.S.C.
§1983
 5. INVERSE
CONDEMNATION/
TAKING (CAL. CONST.,
ART. I §19)
 6. VIOLATION OF EQUAL
PROTECTION (CAL.
CONST., ART. I § 7)
 7. VIOLATION OF DUE
PROCESS (CAL. CONST.,
ART. I §§ 7, 15)
 8. BREACH OF CONTRACT
 9. BREACH OF COVENANT
OF GOOD FAITH AND
FAIR DEALING

CLERK'S DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

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1 Plaintiffs Palmer/Sixth Street Properties, L.P. (hereinafter "Plaintiff") and
 2 Geoffrey Palmer (hereinafter "Palmer") hereby allege and aver as follows:
 3

4 **GENERAL ALLEGATIONS**

5 **PARTIES, JURISDICTION AND VENUE**

- 6 1. Plaintiff Palmer/Sixth Street Properties, L.P., a California limited partnership,
 7 is a property owner in the City of Los Angeles and brings this complaint for
 8 damages based on state and federal constitutional claims relating thereto.
- 9 2. At all times relevant herein, including, but not limited to, during any
 10 administrative proceedings mentioned herein, Plaintiff Geoffrey Palmer,
 11 individually and dba GH Palmer Associates ("Palmer"), acted as the general
 12 manager and authorized agent for, and acted on behalf of and represented the
 13 interests of, Plaintiff.
- 14 3. Defendant the City of Los Angeles (the "City"), is a California municipal
 15 corporation. The City has taken the actions alleged herein through, among other
 16 agencies and governing bodies, the Los Angeles City Council ("Council") and
 17 various local agencies, including, but not limited to, the City of Los Angeles
 18 Central Area Planning Commission ("Planning Commission"), the City of Los
 19 Angeles Planning Department ("Planning Department"), the Director of the City
 20 of Los Angeles Planning Department ("Planning Director") and the Planning
 21 and Land Use Management Committee ("PLUM Committee").
- 22 4. Venue lies in this district pursuant to 28 U.S.C. §1391(b)(1) and because the
 23 Defendant resides in this District and the events giving rise to Plaintiff's and
 24 Palmer's claims occurred in this District. This action is based on, and seeks to
 25 redress, among other things, violations of Plaintiff's rights to equal protection
 26 under the law and due process guaranteed by the United States Constitution,
 27 under the 5th and 14th Amendments as well as a violation of Plaintiff's and
 28 Palmer's civil rights under 42 U.S.C. §1983. Accordingly, this Court has

1 jurisdiction over this action pursuant to 28 U.S.C. §1331, in that this action
 2 arises under the Constitution and laws of the United States. In addition, this
 3 Court has pendent and/or ancillary jurisdiction over the claims for relief alleged
 4 herein under the Constitution of and under the laws of the State of California.
 5 All federal constitutional provisions alleged herein are applicable to and in the
 6 State of California and the City of Los Angeles through the 14th Amendment of
 7 the Constitution of the United States.

8 **PROCEDURAL HISTORY**

- 9 5. On or about February 28, 2007, Plaintiffs filed this action. This action was
 10 stayed until recently, under the *Pullman* abstention doctrine, until a prior state
 11 court proceeding, Los Angeles Superior Court Case No. BS107637 (the “Prior
 12 State Court Proceeding”), described in more detail below, was completed. In
 13 addition, in order to preserve their rights under state law, Plaintiffs have filed an
 14 additional complaint in state court, Case No. BC427941, containing, in essence,
 15 the same Federal and State Constitutional and pendent/ancillary state claims
 16 alleged herein (the “Current State Action”). However, Plaintiffs currently intend
 17 to proceed with this federal action.
- 18 6. The complaint in the Prior State Court Proceeding originally contained, in
 19 essence, the same federal and state constitutional claims presented herein, which
 20 were combined with a petition for writ of mandamus. As is customary, the
 21 Superior Court bifurcated the mandamus proceeding from the complaint
 22 containing the constitutional claims and tried the mandamus petition first.
- 23 7. At the conclusion of the mandamus trial in the Prior State Court Proceeding, the
 24 City filed pleadings and made arguments taking the position that, under the one
 25 judgment rule, judgment could not be entered and a writ of mandamus could not
 26 be issued against it unless and until the pending constitutional claims were
 27 either voluntarily dismissed or adjudicated.

- 1 8. Because Plaintiffs needed to obtain the relief that would be afforded by the entry
2 of judgment and by the issuance of a writ of mandamus in a timely manner,
3 Plaintiffs filed a voluntary dismissal, without prejudice, of the complaint in the
4 Prior State Court Proceeding containing their constitutional claims.
- 5 9. After the conclusion of the trial in the Prior State Court Proceeding, on or about
6 December 14, 2007, the Superior Court, per the Honorable Judge Dzintra Janavs
7 (retired), issued a decision against the City and in favor of Plaintiffs holding, in
8 essence, that the City had violated Plaintiffs' rights under state law, as described
9 in more detail below. (A true and correct copy of the Statement of Decision
10 entered by the Superior Court is attached hereto as Exhibit "A.") The Statement
11 of Decision held, in essence and among other things, that the mandatory
12 affordable housing rental restrictions imposed by the City on the Piero II were
13 in direct conflict with the Costa-Hawkins Act and thus are preempted by it.
- 14 10. On or about February 13, 2008, Judge Janavs entered judgment and issued a writ
15 of mandamus against the City in the Prior State Court Proceeding. (A true and
16 correct copy of the judgment in the Prior State Court Proceeding is attached
17 hereto as Exhibit "B" and a true and correct copy of the peremptory writ of
18 mandate filed in the Prior State Court Proceeding is attached hereto as Exhibit
19 "C.") The peremptory writ of mandate enjoined the City from applying or
20 enforcing Section 11 of the Central City West Specific Plan, Ordinance 167,944,
21 as amended (the "Affordable Housing Provisions") with respect to the Piero II
22 project of Palmer that is the subject of the Trial Court Decision. The
23 aforementioned Statement of Decision and judgment and writ of mandate are
24 sometimes collectively referred to as the "Trial Court Decision" herein.
- 25 11. Subsequently, by a Notice of Appeal dated on or about February 26, 2008, the
26 City appealed the judgment in the Prior State Court Proceeding to the Second
27 District Court of Appeal.
- 28

- 1 12. On or about March 31, 2008, the City and Plaintiffs executed a Covenant and
2 Agreement that was subsequently recorded in the Los Angeles County
3 Recorder's Office on or about April 4, 2008 (the "Contract" or the "Covenant
4 and Agreement"). The Covenant and Agreement obligated the City, among
5 other things, to recommence and continue in good faith the processing of all
6 applications for building and other permits and clearances for the Piero II
7 project including shoring and excavation permits and foundation only permits,
8 and further obligated the City to process and treat Plaintiffs' applications and
9 requests for approval and permits in the same manner that is at least as favorable
10 and not more onerous than the manner in which other similar projects in the City
11 are processed and treated. (A true and correct copy of the Covenant and
12 Agreement along with the Los Angeles County Recorder's Office cover page is
13 attached hereto as Exhibit "D.")
- 14 13. In a unanimous decision and opinion issued or about July 22, 2009 (the "Court
15 of Appeal Decision"), the Court of Appeal affirmed the judgment in the Prior
16 State Court Proceeding, holding, among other things, that Section 11.C's
17 requirements, as applied to Palmer's Piero II project in Condition 10, conflicts
18 with and is preempted by Costa Hawkins. (A true and correct copy of the Court
19 of Appeal Decision is attached hereto as Exhibit "E.")
- 20 14. Thereafter, the City filed a Petition for Review of the Court of Appeal Decision
21 with the California Supreme Court, which was denied. (A true and correct copy
22 of the California Supreme Court's denial of the Petition for Review is attached
23 hereto as Exhibit "F.") By virtue of the foregoing, the Court of Appeal Decision
24 is final and non-appealable.
- 25 15. The City also filed a request with the California Supreme Court that the Court
26 of Appeal Decision be depublished. This request was summarily denied.
- 27 16. In connection with the recent lifting of the stay of this federal action, due to the
28 conclusion of the Prior State Court Proceeding, the City took the position, on the

1 record, that this federal action cannot move forward unless and until Plaintiffs
 2 have first adjudicated their constitutional claims in state court and that the City
 3 will move to stay and/or dismiss this federal action. Plaintiffs disagree with this
 4 position but, to avoid any prejudice that might result if this federal action were
 5 dismissed and the Plaintiffs did not have a complaint on file that tolled any
 6 applicable statutes of limitation with regard to Plaintiffs' constitutional claims,
 7 out of caution, Plaintiffs filed a complaint in the Current State Action.
 8 Depending on whether, when and how the Court in this federal action allows the
 9 case to proceed here, Plaintiffs may seek to stay the Current State Action
 10 pending adjudication of and proceedings in this federal action and hereby
 11 reserves the right to do so.

12 **OTHER FACTS COMMON TO ALL CLAIMS FOR RELIEF**

- 13 17. Plaintiff's general partner, Mr. Geoffrey Palmer, has emerged from relatively
 14 modest beginnings to become one of the Los Angeles County's premier
 15 residential developers. Over the past 15 years, Mr. Palmer has been responsible
 16 for creating over a thousand market-rate and affordable housing units in Los
 17 Angeles. Mr. Palmer's partnerships provide Los Angeles with desperately
 18 needed rental housing. Currently, Mr. Palmer is leading efforts to develop the
 19 woefully neglected, downtown Central City West ("CCW") area. One of Mr.
 20 Palmer's partnerships recently completed construction of 632 residential units
 21 in the innovative Medici development, the first privately developed and
 22 unsubsidized market-rate apartment development built in the CCW area in over
 23 30 years (the "Medici").
- 24 18. In furtherance of these beneficial development efforts, on or about January 6,
 25 2004, Plaintiff acquired the real property located at 609 St. Paul Avenue in the
 26 City of Los Angeles (the "Property"), on which it intends to build the Piero II
 27 project (the "Piero II") which previously was known as the Lorenzo project, a
 28 mixed-use residential (350 units) and commercial (9,705 square feet)

1 development similar in style and theme to the Medici. Like the Medici, the units
2 in the Piero II project will be rental units, not units offered for sale like the rest
3 of the developments in the CCW area. Until recently, the Property was an
4 eyesore devoid of any aesthetic appeal or benefit to the community, consisting
5 mainly of a large parking lot. Before Mr. Palmer identified the Property for
6 renewal and development, the Property was a potent reminder of development
7 stagnation in the CCW area. Prior to its use as a parking lot, the Property
8 reportedly contained several decrepit hotel structures. Plaintiff is informed and
9 believes that the Property contained a rundown and dilapidated building that
10 was demolished by the prior owner in 1990 that consisted of approximately 34
11 individual hotel "rooms" 267 square feet in size that were without kitchens or
12 bathrooms and did not provide for parking. Plaintiff is informed and believes
13 that another hotel building, consisting of approximately 24 units, was also
14 located on the Property and was also demolished by the prior owner in 1986.
15 Plaintiff is informed and believes that the total square footage of the residential
16 hotels located on the Property was roughly 16,575 square feet.

- 17 19. As the owner of the Property and the applicant developer of the Piero II, at all
18 times relevant herein, Plaintiff has standing herein and maintains a beneficial
19 interest in this action.
- 20 20. On or about October 4, 2006, Plaintiff filed a Master Land Use Permit
21 Application (the "Application") seeking Planning Department approval for the
22 Piero II Project.
- 23 21. Due to its location, the Property and the Piero II fall under the ambit of certain
24 zoning and land-use provisions contained in the City's Westlake Community
25 Plan (the "General Plan") and the more geographically focused, Central City
26 West Specific Plan, Ordinance No. 167,944 (the "Specific Plan").
- 27 22. The provisions of the Specific Plan that are central to the claims raised in this
28 complaint are the so-called replacement dwelling provisions of the Specific

1 Plan, namely, Specific Plan §§11.C *et seq.* (the "Replacement Dwelling
 2 Provision" or the "RDP"). In short summary, the RDP is a replacement housing
 3 ordinance designed and intended, in essence, to require developers to replace
 4 affordable housing in new developments constructed on sites where affordable
 5 housing was previously demolished. The RDP reads, in relevant part, as follows
 6 (emphasis added):

7 **"...Section 11. HOUSING REQUIREMENTS . . ."**

8 **C. Replacement Dwelling Units . . .**

9 **2. Residential and Mixed Use Projects**

10 a. All multiple-family residential or Mixed Use Project
 11 Applicants shall be required to do one of the
 12 following, whichever results in the greater number of
 13 dwelling units:

- 14 (1) Document and replace, on a one-for-one basis
 15 in the form of new dwelling unit construction,
 16 Low and Very Low Income Dwelling Units
 17 and/or guest rooms demolished on the lot or
 18 lots on or after February 14, 1988; or
 19 (2) Designate and reserve a total of 15% of the
 20 dwelling units within the Project as Low
 21 Income Dwelling Units. . .

22 d. **In Lieu Credits.** In lieu of the requirements of this
 23 Subdivision, a multiple family residential Project
 24 Applicant may pay a fee.

- 25 (1) The in lieu fee for a required Very Low Income
 26 Dwelling Unit shall be \$100,576.14 per unit.
 27 (2) The in lieu fee for a required Low Income
 28 Dwelling Unit shall be \$78,883.41 per unit. . .

22 **E. Dwelling Unit Rent Levels**

23 1. **Very Low Income Dwelling Unit.** The monthly rent level
 24 for a Very Low Income Dwelling Unit required pursuant to
 25 this Section shall not exceed 30% of 50% of the median
 26 monthly income for persons or families residing in the Los
 27 Angeles Standard Metropolitan Statistical Area. The median
 28 monthly income shall be as determined and published
 periodically by the Federal Housing and Urban
 Development Department.

- 1 **2. Low Income Dwelling Unit.** The monthly rent level for a
 2 Low Income Dwelling Unit required pursuant to this Section
 3 shall not exceed 30% of 80% of the median monthly income
 4 for persons or families residing in the Los Angeles Standard
 Metropolitan Statistical Area. The median monthly income
 shall be as determined and published periodically by the
 Federal Housing and Urban Development Department.”
- 5 23. Based upon Plaintiff’s prior dealings with Defendant regarding applying the
 6 RDP to Plaintiff’s prior developments, pursuant to the administrative procedures
 7 set forth in LAMC §11.5.7, Plaintiff requested an exception and waiver from the
 8 requirements of the RDP from the Planning Commission such that Plaintiff
 9 would neither provide the required 15% inclusionary housing units as Low
 10 Income Dwelling Units nor pay an in-lieu fee for that purpose (“the Request”).
 11 Plaintiff did so, in order, among other things, to preempt the Planning
 12 Department’s wrongful application of the RDP to the Piero II.
- 13 24. The Planning Commission took up the Request, and, after a series of public
 14 evidentiary hearings before the Planning Commission, on or about September
 15 25, 2006, the Planning Commission issued its adjudicatory determination
 16 disapproving Plaintiff’s Request.
- 17 25. Said Request disapproval, however, was part of the larger determination and
 18 approvals made by the Planning Commission in connection with its Specific
 19 Plan Project Permit Compliance that approved permit compliance subject to
 20 certain conditions. Condition No. 10, that was essentially a modification of the
 21 RDP requiring Plaintiff to satisfy one of three purported “alternatives” to the
 22 RDP in order to gain approval for the Piero II, provided as follows:
- 23 (A) Option A (Low Income Dwelling Units On-site). Plaintiff must set
 24 aside 60 dwelling units of the Project for low income housing
 25 pursuant to the terms of an agreement with the City that provides
 26 that these units will be used for low-income for 30 years, that they
 have a specified mix of studio, 1-bedroom and dual master
 apartments and the rent for the units be maintained at a specified
 level of rent;
- 27 (B) Option B (Low Income Dwelling Units Off-Site). Plaintiff must
 28 set aside 60 dwelling units (or portion thereof) of the Project for
 low income housing at an off-site location within the Central City

1 West Specific Plan Area and/or within the boundaries of City
 2 Council District 1, subject to certain conditions; or

3 (C) Option C Low Income Dwelling Units (In Lieu fees). As an
 4 alternative to providing the replacement housing units within the
 5 Project (either on-site or off-site), as set forth in Options A and B,
 Plaintiff may instead pay an in-lieu fee in the amount of
 \$96,182.17 for each of the 60 Low Income dwelling units, or a
 portion thereof.

- 6 26. Essentially, the Planning Commission's "disapproval" of the Request (and
 7 approval of the Project Permit Compliance based on certain conditions) was no
 8 more than a wrongful application of the full requirements of the RDP to the
 9 Piero II. Due to the wrongful and unjustified application of the RDP to the
 10 Piero II, Plaintiff notified the Planning Commission that it disagreed with the
 11 action disapproving of Plaintiff's Request and imposing Condition No. 10 on the
 12 Piero II, and, pursuant to the administrative procedures set forth by LAMC
 13 §11.5.7, on or about October 9, 2006, Plaintiff timely appealed the Planning
 14 Commission's decision to the Council. Plaintiff's appeal requested that the
 15 Council overrule the Planning Commission, expunge Condition No. 10 in its
 16 entirety, and approve the Request without condition.
- 17 27. Plaintiff's appeal to the Council was based, verbally and in writing, on several
 18 grounds for overturning the Planning Commission's decision, as alleged herein,
 19 which grounds are summarized as follows:
- 20 a. The disapproval of the Request and the imposition of Condition No. 10
 21 constituted a violation of the Costa-Hawkins Rental Housing Act (*Cal.
 22 Civ. Code §§1954.50 et seq.*) ("Costa-Hawkins") because, among other
 23 things, it would interfere with the applicant's right to set initial rents and
 24 because Costa-Hawkins preempts the area of rent control regulation;
- 25 b. The disapproval of the Request and the imposition of Condition No. 10
 26 violated the Mitigation Fee Act in that, among other things, in essence,
 27 there was no reasonable relationship between the exaction/fee and the
 28 cost to the public attributable to the development;

- 1 c. The disapproval of the Request and the imposition of Condition No.10
 2 constituted an unconstitutional “regulatory” taking because the City did
 3 not show the constitutionally required nexus between the exaction and the
 4 governmental purpose involved, nor the constitutionally required rough
 5 proportionality between the exaction and the public burdens created by
 6 the Piero II;
- 7 d. The disapproval of the Request and the imposition of Condition No.10
 8 constituted an unconstitutional “physical” taking because it required the
 9 applicant to rent dwelling units to a particular class of people;
- 10 e. The disapproval of the Request and the imposition of Condition No.10
 11 constituted a violation of the Equal Protection Clause because provisions
 12 like the RDP have not been applied to similarly situated property owners
 13 throughout the City of Los Angeles and/or because Condition No.10
 14 violated the Piero II’s future tenants’ equal protection rights by requiring
 15 them, in effect, to subsidize, in part, the affordable units; and
- 16 f. The disapproval of the Request and the imposition of Condition No.10
 17 was an abuse of discretion because the decision was not in accordance
 18 with the law, not supported by proper or adequate findings, and the
 19 findings were not supported by substantial evidence.
- 20 28. On or about November 28, 2006, a preliminary public hearing on Plaintiff’s
 21 appeal was held before the Planning and Land Use Management Committee of
 22 the City Council (the PLUM Committee). As a result of the hearing, the PLUM
 23 Committee issued its report (the “PLUM Report”) recommending that the
 24 Council deny Plaintiff’s Request and to enforce the RDP requirements.
- 25 29. On or about December 12, 2006, Plaintiff’s final appeal was heard before the
 26 Council as per LAMC §11.5.7 et seq. At the hearing, the PLUM Committee
 27 submitted its PLUM Report for the Council’s consideration. After a short,
 28 public evidentiary hearing, the Council, in an abusive exercise of its

1 discretionary judgment, decided to adopt the findings and recommendations of
 2 PLUM Report (the "City's Decision" or the "Action"). (A true and correct copy
 3 of the PLUM Report and Council adoption thereof is attached hereto as Exhibit
 4 "G", and incorporated herein by this reference as though set forth at length).
 5 Plaintiff has now exhausted its administrative and other judicial remedies and
 6 is entitled to seek redress from this Court.

- 7 30. In connection with the City's Decision, the Council adopted various findings
 8 contained in the Council file, in the Planning Commission determinations,
 9 and/or in the Planning Department staff reports (collectively, the "Findings").
 10 These Findings were not based on substantial evidence and/or were not
 11 sufficient to support the City's Decision.
- 12 31. Plaintiff is informed, believes and thereupon alleges that the City's Decision was
 13 clearly politically motivated and not based on the merits, and that, among other
 14 things, the Council was motivated by animus against Plaintiff and its principal,
 15 Geoff Palmer, and/or intended to pander to the political agendas of the special
 16 interest groups who opposed Plaintiff's project.
- 17 32. In making the City's Decision to adopt the PLUM Report, the Council thereby
 18 denied Plaintiff's final administrative appeal to expunge Condition No. 10 and
 19 upheld the disapproval of the Piero II's Request for an exception to the RDP.
 20 Thus, the Council's vote required Plaintiff to comply with all terms and
 21 provisions of the RDP, without exception.
- 22 33. Thereafter, Plaintiff and Palmer filed a petition for administrative mandamus,
 23 alleging, among other things, that the application of section 11.C's affordable
 24 housing requirement was preempted by and violated Costa-Hawkins, and
 25 violated the United States and California Constitutions.

26 ///
 27 ///
 28 ///

FIRST CLAIM FOR RELIEF
(For Inverse Condemnation -
As against all Named Defendants)

- 4 34. Plaintiff hereby incorporates by this reference paragraphs 1 through 33, above,
5 as though fully set forth at length herein.

6 35. First, the imposition of the RDP on the Piero II constitutes an illegal and
7 discretionary, permanent and/or temporary “regulatory” taking of Plaintiff’s
8 property in violation of *U.S. Const.*, 5th Amend. in that, among other things:

9 a. Defendant’s application of the RDP to the Piero II would have had an
10 adverse economic impact on Plaintiffs by, among other things, forcing
11 Palmer to build and rent certain units in the Piero II at a discount below
12 the market rate or to pay an in lieu fee;

13 b. Defendant’s application of the RDP to the Piero II would have forced
14 Palmer to rent at below market rates to certain tenants, constituting a
15 “wealth transfer” from Palmer, the owner of the subject property, to
16 certain tenants receiving the benefit of below market rate rental units,
17 who thereby would receive a resulting “transfer premium;”

18 c. Defendant’s application of the RDP to the Piero II would have created
19 significant economic harm to Palmer, regardless of whether Palmer
20 realized a rate of return comparable to other real estate developers, or not;

21 d. Defendant’s application of the RDP to the Piero II adversely affected
22 Palmer’s distinct investment-backed expectations and damaged Palmer’s
23 ability to get financing for the Project;

24 e. The character of the City’s action in applying the RDP to the Piero II
25 constituted a government action that places a high burden on a few
26 property owners that should more fairly be apportioned among the entire
27 tax base because the public as a whole should pay for the benefit of

affordable housing, and not solely owners of real estate or a singular, narrow and separate subset of landowners.

36. **Second**, the City's Decision to impose the RDP on the Piero II constituted an illegal and discretionary, permanent and/or temporary "regulatory" taking of Plaintiff's property in violation of *U.S. Const.*, 5th Amend. in that, among other things, Defendant did not make specific findings, based on substantial evidence, regarding the following matters, among others:

- a. The existence of a **nexus** between Defendant's application of the RDP to the Piero II and the stated purposes of the Specific Plan and the RDP itself; and
- b. That imposition of the RDP on the Piero II is **roughly proportional** to the impact the Piero II would have on the CCW area's affordable housing supply if the RDP is not applied.

37. **Third**, the City's Decision to impose the RDP on the Piero II constituted an illegal and discretionary, permanent and/or temporary "regulatory" taking of Plaintiff's property in that, among other things:

- a. The imposition of the RDP on the Piero II did not substantially advance any legitimate state interest and/or is not reasonably necessary for the effectuation of a substantial public purpose in that, among other things, the provision would not increase the production of affordable housing nor improve the jobs-housing balance in the CCW area. In fact, since the adoption of the Specific Plan, the provision has impeded and/or virtually prevented development of housing in the CCW area so much that, until the Medici project was built, Plaintiff is informed and believes that no private and unsubsidized market-rate housing development had been produced in the CCW area in over 30 years. In addition, Plaintiff is informed and believes that Planning Department Staff Reports have indicated and advised that a *repeal* of the RDP would stimulate

- 1 development in the CCW area and would, ultimately, serve to fulfill the
 2 fundamental housing goals stated in the Specific Plan;
- 3 b. The imposition of the RDP on the Piero II did not substantially advance
 4 any legitimate state interest in that, among other things, Defendant's
 5 justification for the imposition of the RDP on the Piero II does not
 6 reasonably relate to the Piero II, and the imposition of Section 11. C on
 7 the Piero II does not reasonably serve the Specific Plan's stated interests
 8 because, *inter alia*, Defendant has not and cannot produce substantial and
 9 substantiated evidence demonstrating that residential development
 10 projects in the CCW area, such as the Piero II, if not subjected to the
 11 requirements of the RDP, would adversely affect the supply of affordable
 12 housing in the area;
- 13 c. The imposition of the RDP on the Piero II would not permit Plaintiff to
 14 profit and obtain a reasonable return on its investment. The RDP would
 15 drastically reduce or even eliminate the Piero II's operating profits, thus
 16 denying Plaintiff a reasonable return on its investment;
- 17 d. The imposition of the RDP on the Piero II would not provide Plaintiff any
 18 benefits or rights that mitigate whatever financial burdens the imposition
 19 of the RDP would place on Plaintiff.
- 20 e. The imposition of the RDP on the Piero II would prevent the highest and
 21 best use of the Property in that the highest and best use of the Property is
 22 the construction of market-rate housing. As planned, the Piero II will help
 23 to alleviate the tremendous market-rate housing shortage in the CCW
 24 area;
- 25 f. The imposition of the RDP on the Piero II would extinguish a
 26 fundamental attribute of Plaintiff's ownership rights, in particular, *inter*
 27 *alia*, the right to exclude others; and/or
- 28

- 1 g. The imposition of the RDP on the Piero II was an invalid government
 2 demand and imposition on the subject property as a condition for granting
 3 the permit.
- 4 38. **Fourth**, in addition or in the alternative, the imposition of Section 11.C.2.a.2 of
 5 the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero
 6 II constitutes illegal rent control that rises to the level of an illegal and
 7 discretionary, permanent and/or temporary “regulatory” taking in that, among
 8 other things:
- 9 a. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 10 with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively would
 11 have capped 15% of the Piero II’s allowable rents at a fixed rate with
 12 only limited increases and thus constituted an unauthorized and illegal
 13 form of rent control;
- 14 b. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 15 with Specific Plan, Section 11.E *et seq.*) on the Piero II constitutes an
 16 imposition of rent control without providing Plaintiff with any statutory
 17 or administrative mechanisms to safeguard against the confiscatory
 18 results of its application; thus, the imposition of these provisions on the
 19 Property would have denied Plaintiff the ability to earn fair, just and
 20 reasonable returns on its investment. The RDP does not contain any
 21 mechanism or proviso designed to take into consideration, or make any
 22 adjustments for, the value of investments made by Plaintiff with respect
 23 to the Property, the amount of return Plaintiff needs to recoup those
 24 investments, and the per-unit operating income required by Plaintiff to
 25 adequately finance the development of Piero II and/or secure a fair, just
 26 and reasonable return on those investments;
- 27 c. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 28 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an

imposition of rent control that left Plaintiff unprotected against, *inter alia*, the effects of inflation, anticipated or unanticipated increased operating costs, or anticipated or unanticipated capital expenditures;

- d. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an imposition of illegal rent control without providing Plaintiff with any mechanism for adjustments, abatements, exceptions or waivers therefrom even if Plaintiff had reasonable and legitimate reasons for said adjustments, abatements, exceptions or waivers; and/or
 - e. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an imposition of illegal rent control in an arbitrary and discriminatory fashion in that, among other things, would have forced Plaintiff to set rates on 15% of the Piero II units at a base rate not in any way related to, or comparable with, the base rates for units subject to rent control outside the CCW area.

Fifth, in addition or in the alternative, the City's Decision to impose the RDP on the Piero II constituted an illegal and discretionary "physical" taking of Plaintiff's property in so far as, among other things:

 - a. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II was a *per se* physical occupation of Plaintiff's property in that Plaintiff would have been forced to accept the occupation of low income tenants not already in residence, in violation of Plaintiff's fundamental right to exclude others from occupying or using the Property owned by Plaintiff;
 - b. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II denied Plaintiff's economically viable use of the Property and property rights because, among other things, Plaintiff would have been unable to

- 1 continue to engage profitably in the business for which it invested its
 2 capital; Plaintiff was unable to finance and build any market-rate
 3 residential development on the Property on any reasonable basis;
 4 Plaintiff's right to dispose of the property for any sums reasonably
 5 approaching its investment was impaired; and/or Plaintiff's reasonable
 6 investment backed expectations have been diminished;
- 7 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
 8 did not substantially advance any legitimate state interest. The provision
 9 would not increase the production of affordable housing nor improve the
 10 jobs-housing balance in the CCW area. In fact, since the adoption of the
 11 Specific Plan, the provision has impeded and/or virtually prevented
 12 development of housing in the CCW area so much that, until the Medici
 13 project was built, Plaintiff is informed and believes that no private and
 14 unsubsidized market-rate housing development had been produced in the
 15 CCW area in over 30 years. In addition, recent Planning Department Staff
 16 Reports indicate and advise that a *repeal* of the RDP would stimulate
 17 development in the CCW area and would, ultimately, serve to fulfill the
 18 fundamental housing goals stated in the Specific Plan.
- 19 40. Defendant had adjudicatory discretion to apply, modify, interpret or waive
 20 provisions of the Specific Plan and/or the RDP as they apply to property
 21 developments covered within the Specific Plan area, and had the free discretion
 22 to approve or disapprove entitlement grants relating thereto or to make the
 23 determination that they did not apply to a particular project.
- 24 41. As a proximate result of the City's acts and omissions as alleged herein, the
 25 Piero II project and its financing have been delayed and prevented from moving
 26 forward and Plaintiff has suffered general, special, consequential, compensatory
 27 and/or incidental damages, including, but not limited to: losses due to a
 28 reduction in the fair market value of the Property and/or the Piero II project in

1 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 2 amount of financing Palmer is able to obtain for the Property and/or the Piero
 3 II project due to the change in the credit and real estate markets that occurred
 4 during the period of delay caused by the City; the amount of additional interest
 5 on existing loans, real estate taxes and other carrying costs paid by Palmer
 6 during the period of delay caused by the City, in the millions of dollars;
 7 increased future costs of financing, in the tens of millions of dollars, including
 8 additional interest and other sums that will have to be paid because, among other
 9 things, during the period of delay, the credit and real estate markets have
 10 changed and financing cannot now be found on terms as advantageous as they
 11 were when Palmer could have moved forward with the Piero II project, but for
 12 the acts and omissions of the City; lost opportunity and other costs, in the tens
 13 of millions of dollars, due to the fact that Palmer will now have to invest
 14 significantly more equity in the Piero II project because, during the period of
 15 delay caused by the City, among other things, the credit and real estate markets
 16 have changed such that loans for this type of project can only be obtained on
 17 significantly lower loan to value or cost ratios, requiring a much larger
 18 percentage of equity cushion and a much higher equity investment by Plaintiffs;
 19 loss of use; and loss of rental and other revenues and profits, in the tens of
 20 millions of dollars, all in an unascertained amount, according to proof.

- 21 42. Plaintiff has received no compensation for the taking of its Property.
- 22 43. To the extent that the aforementioned takings are deemed to have been
 invalidated by any actions including, but not limited to, the aforementioned Trial
 Court Decision and/or Court of Appeal Decision, Plaintiff alleges that the
 aforementioned takings constitute temporary takings, because the City's
 activities have already risen to the level of a taking of the Property and no
 subsequent action by the City can relieve it of its duty to provide compensation
 for the period during which the taking was effective. Invalidation of the subject

1 ordinance by Defendant or the decision to not now impose Section 11.C.2.a.2
 2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) upon the
 3 Piero II, without payment of fair value for the use of the property during such
 4 period, would be a constitutionally insufficient remedy.

5 44. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs
 6 because of this proceeding which are recoverable.

7 **SECOND CLAIM FOR RELIEF**

8 **(For Violation of Equal Protection (As Applied) -**

9 **As against all Named Defendants)**

10 45. Plaintiff hereby incorporates by this reference paragraphs 1 through 44, above,
 11 as though fully set forth at length herein.

12 46. **First**, the City's imposition of the RDP to the Piero II constituted a state action
 13 in violation of Plaintiff's equal protection rights under *U.S. Const.*, 14th Amend.
 14 In this regard, Plaintiff is informed and believes that Defendant has granted
 15 other CCW area property development applicants similarly situated to Plaintiff
 16 various modifications, waivers, agreements, and/or incentives in conjunction
 17 with the application of the RDP to those applicants' prospective developments.
 18 In this case and without any legitimate justification, Defendant tried to force
 19 Plaintiff to comply with the strict letter of the RDP, unmodified, even though no
 20 affordable housing units, or any other type of housing units have been located
 21 or demolished from the Property for over 16 years and that the Property had
 22 been used as a parking lot at all relevant times herein. There is no basis, rational
 23 or otherwise, for the City's Decision to try to force Plaintiff to abide by
 24 restrictions not placed on similarly situated landowners. Thus, Defendant has
 25 violated Plaintiff's equal protection rights under *U.S. Const.*, 14th Amend. and
 26 have, without a rational basis, unreasonably and arbitrarily applied the RDP to
 27 the Piero II while denying Plaintiff any of the modifications, waivers or
 28 incentives offered to similarly situated landowners.

- 1 47. **Second**, in addition or in the alternative, the affordable housing burdens created
 2 by the RDP are imposed on a singular, narrow and separate class of City
 3 landowners, including Plaintiff, who happen to own property located inside the
 4 CCW sub-area. Plaintiff is informed and believes that no other sub-area of the
 5 City is subject to the RDP and no other sub-area's Specific Plan imposes
 6 affordable housing requirements similar to those contained in the RDP. In
 7 addition, the provisions of the RDP were adopted without adequate study,
 8 evaluation, findings, evidence or other consideration by Defendant sufficient to
 9 demonstrate any basis, rational or otherwise, for treating CCW area landowners
 10 and their properties, including Plaintiff, the Property and the Piero II, differently
 11 from similarly situated landowners and properties located in other sub-areas of
 12 the City. The problems proposed to be solved by enactment of the RDP, *inter*
 13 *alia*, the lack of affordable housing and the jobs-housing imbalance, are
 14 problems in virtually every sub-area of the City.
- 15 48. **Third**, in addition or in the alternative, the City's Decision to apply the RDP
 16 to the Piero II violated the equal protection rights of future tenants of the Piero
 17 II's "market-rate" units because, among other things, the RDP has the practical
 18 effect of increasing housing costs for market-rate units. Under the RDP, market-
 19 rate tenants would be required, in effect, to bear and subsidize, in part, the rents
 20 of lower-income units imposed by the RDP. The Specific Plan does not
 21 equitably apportion the economic burden of achieving compliance with the
 22 RDP, and there is no basis, rational or otherwise, for requiring the separate class
 23 of market-rate tenants to bear the burden of subsidizing rents of their low-
 24 income neighbors. Plaintiff is and will be adversely affected and damaged by
 25 the same. Thus, Defendant has violated Plaintiff's equal protection rights under
 26 *U.S. Const.*, 14th Amend.
- 27 49. As a proximate result of the City's acts and omissions as alleged herein, the
 28 Piero II project and its financing have been delayed and prevented from moving

1 forward and Plaintiff has suffered general, special, consequential, compensatory
 2 and/or incidental damages, including, but not limited to: losses due to a
 3 reduction in the fair market value of the Property and/or the Piero II project in
 4 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 5 amount of financing Palmer is able to obtain for the Property and/or the Piero
 6 II project due to the change in the credit and real estate markets that occurred
 7 during the period of delay caused by the City; the amount of additional interest
 8 on existing loans, real estate taxes and other carrying costs paid by Palmer
 9 during the period of delay caused by the City, in the millions of dollars;
 10 increased future costs of financing, in the tens of millions of dollars, including
 11 additional interest and other sums that will have to be paid because, among other
 12 things, during the period of delay, the credit and real estate markets have
 13 changed and financing cannot now be found on terms as advantageous as they
 14 were when Palmer could have moved forward with the Piero II project, but for
 15 the acts and omissions of the City; lost opportunity and other costs, in the tens
 16 of millions of dollars, due to the fact that Palmer will now have to invest
 17 significantly more equity in the Piero II project because, during the period of
 18 delay caused by the City, among other things, the credit and real estate markets
 19 have changed such that loans for this type of project can only be obtained on
 20 significantly lower loan to value or cost ratios, requiring a much larger
 21 percentage of equity cushion and a much higher equity investment by Plaintiffs;
 22 loss of use; and loss of rental and other revenues and profits, in the tens of
 23 millions of dollars, all in an unascertained amount, according to proof.

24 50. Plaintiff has incurred and/or will incur attorney fees and other fees and costs
 25 because of this proceeding, which are recoverable.

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THIRD CLAIM FOR RELIEF

(For Violation of Due Process (As Applied) -

As against all Named Defendants)

51. Plaintiff hereby incorporates by this reference paragraphs 1 through 50, above, as though fully set forth at length herein.
 52. Defendant violated Plaintiff's due process rights under *U.S. Const.*, 14th Amend. in that, among other things:
 - a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively capped the Piero II's allowable rents at a fixed rate with only limited increases and thus constituted an improper form of rent control;
 - b. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II without providing Plaintiff with any statutory or administrative structural features that safeguard against confiscatory results in applying such controls. Thus, the imposition of these provisions on the Property denied Plaintiff the ability to earn fair, just and reasonable returns on its investment. These provisions do not contain any mechanism or proviso designed to take into consideration, or make any adjustments for, the value of investments made by Plaintiff with respect to the Property, the amount of return Plaintiff needs to recoup this investment, and the per-unit operating income required by Plaintiff to adequately finance the development of the Piero II and/or as secure a fair, just and reasonable return on its investment;
 - c. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II in a manner which left Plaintiff unprotected against,

- inter alia*, the effects of inflation, anticipated or unanticipated increased operating costs, or anticipated or unanticipated capital expenditures;

d. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) without providing Plaintiff with any mechanism for adjustments, abatements, exceptions or waivers therefrom even if Plaintiff had reasonable and legitimate reasons for said adjustments, abatements, exceptions or waivers; and/or

e. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) without any basis, rational or otherwise, for forcing Plaintiff to accept initial base rents far below the market-value of those units and far below the initial base rents of similarly situated property owners subject to rent control within the City and County of Los Angeles.

53. Defendant had adjudicatory discretion to apply, modify, or waive provisions of the Specific Plan as they apply to property developments within the CCW area and had the discretion to approve or disapprove entitlement grants relating thereto or to make the determination that they did not apply to a particular project.

54. As a proximate result of the City's acts and omissions as alleged herein, the Piero II project and its financing have been delayed and prevented from moving forward and Plaintiff has suffered general, special, consequential, compensatory and/or incidental damages, including, but not limited to: losses due to a reduction in the fair market value of the Property and/or the Piero II project in the tens of millions of dollars; a reduction of tens of millions of dollars in the amount of financing Palmer is able to obtain for the Property and/or the Piero II project due to the change in the credit and real estate markets that occurred during the period of delay caused by the City; the amount of additional interest

on existing loans, real estate taxes and other carrying costs paid by Palmer during the period of delay caused by the City, in the millions of dollars; increased future costs of financing, in the tens of millions of dollars, including additional interest and other sums that will have to be paid because, among other things, during the period of delay, the credit and real estate markets have changed and financing cannot now be found on terms as advantageous as they were when Palmer could have moved forward with the Piero II project, but for the acts and omissions of the City; lost opportunity and other costs, in the tens of millions of dollars, due to the fact that Palmer will now have to invest significantly more equity in the Piero II project because, during the period of delay caused by the City, among other things, the credit and real estate markets have changed such that loans for this type of project can only be obtained on significantly lower loan to value or cost ratios, requiring a much larger percentage of equity cushion and a much higher equity investment by Plaintiffs; loss of use; and loss of rental and other revenues and profits, in the tens of millions of dollars, all in an unascertained amount, according to proof.

55. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs because of this proceeding, which are recoverable.

FOURTH CLAIM FOR RELIEF

(For Violation of Civil Rights under 42 U.S.C. §1983 -

As against all Named Defendants)

56. Plaintiff and Palmer hereby incorporates by this reference paragraphs 1 through 55, above, as though fully set forth at length herein.

57. The City's Decision to impose the RDP on the Piero II was a decision committed by government officials under color of state law. The City's Decision constitutes a violation of Plaintiff's and Palmer's civil rights under 42 U.S.C. §1983 in that, among other things, under color of the Specific Plan and/or RDP, Defendant has subjected Plaintiff and Palmer to a deprivation of

1 their rights and privileges under the United States Constitution as set forth
 2 herein.

- 3 58. Additionally, Plaintiffs are informed and believe, and based thereon allege that
 4 Defendant's animus toward Plaintiff and Palmer and their violation of Plaintiff's
 5 and Palmer's constitutional rights is politically motivated and is based on,
 6 among other things, Councilman Ed Reyes' personal animus against Plaintiff
 7 and its general partner, Palmer, for, among other things, the prior litigations
 8 between the City of Los Angeles and Palmer, in which Palmer and his entities
 9 have litigated successfully against the City's unlawful conduct. In each of these
 10 prior litigations, the subject property in dispute has been in Councilman Reyes'
 11 district. Councilman Reyes has done little more than pander to the pro-tenant
 12 political factions in a transparent attempt to garner their political support. It
 13 appears that in retaliation for Palmer's prior successful efforts in challenging the
 14 City's and Councilman Reyes' conduct in court, Defendant has sought to exact
 15 a certain measure of punishment and "payback" (under the guise of acting under
 16 state law) against Plaintiff and Palmer all in violation of Plaintiff's and Palmer's
 17 constitutionally protected rights. Being motivated by improper animus, in
 18 derogation of Plaintiff's and Palmer's constitutional rights, the City's Decision
 19 is actionable under 42 U.S.C. §1983.
- 20 59. As a proximate result of the City's acts and omissions as alleged herein, the
 21 Piero II project and its financing have been delayed and prevented from moving
 22 forward and Plaintiff has suffered general, special, consequential, compensatory
 23 and/or incidental damages, including, but not limited to: losses due to a
 24 reduction in the fair market value of the Property and/or the Piero II project in
 25 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 26 amount of financing Palmer is able to obtain for the Property and/or the Piero
 27 II project due to the change in the credit and real estate markets that occurred
 28 during the period of delay caused by the City; the amount of additional interest

on existing loans, real estate taxes and other carrying costs paid by Palmer during the period of delay caused by the City, in the millions of dollars; increased future costs of financing, in the tens of millions of dollars, including additional interest and other sums that will have to be paid because, among other things, during the period of delay, the credit and real estate markets have changed and financing cannot now be found on terms as advantageous as they were when Palmer could have moved forward with the Piero II project, but for the acts and omissions of the City; lost opportunity and other costs, in the tens of millions of dollars, due to the fact that Palmer will now have to invest significantly more equity in the Piero II project because, during the period of delay caused by the City, among other things, the credit and real estate markets have changed such that loans for this type of project can only be obtained on significantly lower loan to value or cost ratios, requiring a much larger percentage of equity cushion and a much higher equity investment by Plaintiffs; loss of use; and loss of rental and other revenues and profits, in the tens of millions of dollars, all in an unascertained amount, according to proof.

60. Additionally, Plaintiff and Palmer have incurred and/or will incur attorney's fees and other fees and costs because of this proceeding, which are recoverable pursuant to 42 U.S.C. §1988.

FIFTH CLAIM FOR RELIEF

(For Inverse Condemnation Under the California Constitution (California Const., Art. I, §19) - As against all Named Defendants)

61. Plaintiff hereby incorporates by this reference paragraphs 1 through 60, above, as though fully set forth at length herein.
62. **First**, the imposition of the RDP on the Piero II constitutes an illegal and discretionary, permanent and/or temporary "regulatory" taking of Plaintiff's property in violation of *Cal. Const.*, Art. I, § 19, in that, among other things:

- 1 a. Defendant's application of the RDP to the Piero II would have had an
2 adverse economic impact on Plaintiffs by, among other things, forcing
3 Palmer to build and rent certain units in the Piero II at a discount below
4 the market rate or to pay an in lieu fee;
 - 5 b. Defendant's application of the RDP to the Piero II, would have forced
6 Palmer to rent at below market rates to certain tenants, constituting a
7 "wealth transfer" from Palmer, the owner of the subject property, to
8 certain tenants receiving the benefit of below market rate rental units,
9 who thereby would receive a resulting "transfer premium;"
 - 10 c. Defendant's application of the RDP to the Piero II would have created
11 significant economic harm to Palmer, regardless of whether Palmer
12 realized a rate of return comparable to other real estate developers, or not;
 - 13 d. Defendant's application of the RDP to the Piero II adversely affected
14 Palmer's distinct investment-backed expectations and damaged Palmer's
15 ability to get financing for the project;
 - 16 e. The character of the City's action in applying the RDP to the Piero II
17 constituted a government action that places a high burden on a few
18 property owners that should more fairly be apportioned among the entire
19 tax base because the public as a whole should pay for the benefit of
20 affordable housing, and not solely owners of real estate or a singular,
21 narrow and separate subset of landowners.
- 22 63. Second, the City's Decision to impose the RDP on the Piero II constituted an
23 illegal and discretionary, permanent and/or temporary "regulatory" taking of
24 Plaintiff's property in violation of *Cal. Const.*, Art. I, §19 in that, among other
25 things, Defendant did not make specific findings, based on substantial evidence,
26 regarding the following matters, among others:
- 27
- 28

- 1 a. The existence of a **nexus** between Defendant's application of the RDP to
 2 the Piero II and the stated purposes of the Specific Plan and the RDP
 3 itself; and
 4 b. That imposition of the RDP on the Piero II is **roughly proportional** to
 5 the impact the Piero II would have on the CCW area's affordable housing
 6 supply if the RDP is not applied.
- 7 64. **Third**, the City's Decision to impose the RDP on the Piero II constitutes an
 8 illegal and discretionary permanent and/or temporary "regulatory" taking of
 9 Plaintiff's property in violation of *Cal. Const.*, Art. I, §19 in that, among other
 10 things:
- 11 a. The imposition of the RDP on the Piero II did not substantially advance
 12 any legitimate state interest and/or is not reasonably necessary for the
 13 effectuation of a substantial public purpose in that, among other things,
 14 the provision would not increase the production of affordable housing nor
 15 improve the jobs-housing balance in the CCW area. In fact, since the
 16 adoption of the Specific Plan, the provision has impeded and/or virtually
 17 prevented development of housing in the CCW area so much that, until
 18 the Medici project was built, Plaintiff is informed and believes that no
 19 private and unsubsidized market-rate housing development had been
 20 produced in the CCW area in over 30 years. In addition, Plaintiff is
 21 informed and believes that Planning Department Staff Reports have
 22 indicated and advised that a *repeal* of the RDP would stimulate
 23 development in the CCW area and would, ultimately, serve to fulfill the
 24 fundamental housing goals stated in the Specific Plan;
- 25 b. The imposition of the RDP on the Piero II did not substantially advance
 26 any legitimate state interest in that, among other things, Defendant's
 27 justification for the imposition of the RDP on the Piero II does not
 28 reasonably relate to the Piero II, and the imposition of Section 11. C on

1 the Piero II does not reasonably serve the Specific Plan's stated interests
 2 because, *inter alia*, Defendant has not and cannot produce substantial and
 3 substantiated evidence demonstrating that residential development
 4 projects in the CCW area, such as the Piero II, if not subjected to the
 5 requirements of the RDP, would adversely affect the supply of affordable
 6 housing in the area;

- 7 c. The imposition of the RDP on the Piero II would not permit Plaintiff to
 profit and obtain a reasonable return on its investment. The RDP would
 drastically reduce or even eliminate the Piero II's operating profits, thus
 denying Plaintiff a reasonable return on its investment;
- 8 d. The imposition of the RDP on the Piero II does not provide Plaintiff any
 benefits or rights that mitigate whatever financial burdens the imposition
 of the RDP would place on Plaintiff.
- 9 e. The imposition of the RDP on the Piero II would prevent the highest and
 best use of the Property in that the highest and best use of the Property is
 the construction of market-rate housing. As planned, the Piero II will help
 to alleviate the tremendous market-rate housing shortage in the CCW
 area;
- 10 f. The imposition of the RDP on the Piero II would extinguish a
 fundamental attribute of Plaintiff's ownership rights, in particular, *inter*
 alia, the right to exclude others; and/or
- 11 g. The imposition of the RDP on the Piero II is an invalid government
 demand and imposition on the subject property as a condition for granting
 the permit.

- 12 65. **Fourth**, in addition or in the alternative, the imposition of Section 11.C.2.a.2 of
 13 the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero
 14 II constitutes illegal rent control that rises to the level of a permanent and/or
 15

1 temporary “regulatory” taking of Plaintiff’s property in violation of *Cal. Const.*,
 2 Art. I, §19 in that, among other things:

- 3 a. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 4 with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively would
 5 have capped 15% of the Piero II’s allowable rents at a fixed rate with
 6 only limited increases and thus constituted an unauthorized and illegal
 7 form of rent control;
- 8 b. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 9 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
 10 imposition of rent control without providing Plaintiff with any statutory
 11 or administrative mechanisms to safeguard against the confiscatory
 12 results of its application; thus, the imposition of these provisions on the
 13 Property would have denied Plaintiff the ability to earn fair, just and
 14 reasonable returns on its investment. The RDP does not contain any
 15 mechanism or proviso designed to take into consideration, or make any
 16 adjustments for, the value of investments made by Plaintiff with respect
 17 to the Property, the amount of return Plaintiff needs to recoup those
 18 investments, and the per-unit operating income required by Plaintiff to
 19 adequately finance the development of Piero II and/or secure a fair, just
 20 and reasonable return on those investments;
- 21 c. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 22 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
 23 imposition of rent control which left Plaintiff unprotected against, *inter*
 24 *alia*, the effects of inflation, anticipated or unanticipated increased
 25 operating costs, or anticipated or unanticipated capital expenditures;
- 26 d. Defendant’s imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 27 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
 28 imposition of illegal rent control without providing Plaintiff with any

- 1 mechanism for adjustments, abatements, exceptions or waivers therefrom
 2 even if Plaintiff has reasonable and legitimate reasons for said
 3 adjustments, abatements, exceptions or waivers; and/or
- 4 e. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 5 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
 6 imposition of illegal rent control in an arbitrary and discriminatory
 7 fashion in that, among other things, would have forced Plaintiff to set
 8 rates on 15% of the Piero II units at a base rate not in any way related to,
 9 or comparable with, the base rates for units subject to rent control outside
 10 the CCW area.
- 11 66. **Fifth**, in addition or in the alternative, the City's Decision to impose the RDP
 12 on the Piero II constituted an illegal and discretionary, permanent and/or
 13 temporary "physical" taking of Plaintiff's property in so far as, among other
 14 things:
- 15 a. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
 16 was a *per se* physical occupation of Plaintiff's property in that Plaintiff
 17 would have been forced to accept the occupation of low income tenants
 18 not already in residence, in violation of Plaintiff's fundamental right to
 19 exclude others from occupying or using the Property owned by Plaintiff;
- 20
- 21 b. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
 22 denied Plaintiff's economically viable use of the Property and property
 23 rights because, among other things, Plaintiff would have been unable to
 24 continue to engage profitably in the business for which it invested its
 25 capital; Plaintiff was unable to finance and build any market-rate
 26 residential development on the Property on any reasonable basis;
 27 Plaintiff's right to dispose of the property for any sums reasonably
 28

- 1 approaching its investment is impaired; and/or Plaintiff's reasonable
 2 investment backed expectations have been diminished;
- 3 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
 4 did not substantially advance any legitimate state interest. The provision
 5 would not increase the production of affordable housing nor improve the
 6 jobs-housing balance in the CCW area. In fact, since the adoption of the
 7 Specific Plan, the provision has impeded and/or virtually prevented
 8 development of housing in the CCW area so much that, until the Medici
 9 project was built, Plaintiff is informed and believes that no private and
 10 unsubsidized market-rate housing development had been produced in the
 11 CCW area in over 30 years. In addition, recent Planning Department Staff
 12 Reports indicate and advise that a *repeal* of the RDP would stimulate
 13 development in the CCW area and would, ultimately, serve to fulfill the
 14 fundamental housing goals stated in the Specific Plan.
- 15 67. Defendant had adjudicatory discretion to apply, modify, interpret or waive
 16 provisions of the Specific Plan and/or the RDP as they apply to property
 17 developments covered within the Specific Plan area, and had the free discretion
 18 to approve or disapprove entitlement grants relating thereto or to make the
 19 determination that they did not apply to a particular project.
- 20 68. As a proximate result of the City's acts and omissions as alleged herein, the
 21 Piero II project and its financing have been delayed and prevented from moving
 22 forward and Plaintiff has suffered general, special, consequential, compensatory
 23 and/or incidental damages, including, but not limited to: losses due to a
 24 reduction in the fair market value of the Property and/or the Piero II project in
 25 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 26 amount of financing Palmer is able to obtain for the Property and/or the Piero
 27 II project due to the change in the credit and real estate markets that occurred
 28 during the period of delay caused by the City; the amount of additional interest

1 on existing loans, real estate taxes and other carrying costs paid by Palmer
 2 during the period of delay caused by the City, in the millions of dollars;
 3 increased future costs of financing, in the tens of millions of dollars, including
 4 additional interest and other sums that will have to be paid because, among other
 5 things, during the period of delay, the credit and real estate markets have
 6 changed and financing cannot now be found on terms as advantageous as they
 7 were when Palmer could have moved forward with the Piero II project, but for
 8 the acts and omissions of the City; lost opportunity and other costs, in the tens
 9 of millions of dollars, due to the fact that Palmer will now have to invest
 10 significantly more equity in the Piero II project because, during the period of
 11 delay caused by the City, among other things, the credit and real estate markets
 12 have changed such that loans for this type of project can only be obtained on
 13 significantly lower loan to value or cost ratios, requiring a much larger
 14 percentage of equity cushion and a much higher equity investment by Plaintiffs;
 15 loss of use; and loss of rental and other revenues and profits, in the tens of
 16 millions of dollars, all in an unascertained amount, according to proof.

- 17 69. Plaintiff has received no compensation for the taking of its Property.
- 18 70. To the extent that the aforementioned takings are deemed to have been
 19 invalidated by any actions including, but not limited to, the aforementioned Trial
 20 Court Decision and/or Court of Appeal Decision, Plaintiff alleges that the
 21 aforementioned takings constitute temporary takings, because the City's
 22 activities have already risen to the level of a taking of the Property and no
 23 subsequent action by the City can relieve it of its duty to provide compensation
 24 for the period during which the taking was effective. Invalidation of the subject
 25 ordinance by Defendant or the decision to not now impose Section 11.C.2.a.2
 26 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) upon the
 27 Piero II, without payment of fair value for the use of the property during such
 28 period, would be a constitutionally insufficient remedy.

- 1 71. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs
2 because of this proceeding, including, but not limited to, those which are
3 recoverable pursuant to *Code of Civ. Proc.* §1036.

SIXTH CLAIM FOR RELIEF

**(For Violation of Equal Protection (As Applied) Under
The California Constitution (California Const., Art. I, §7) -
As against all Named Defendants)**

- 8 72. Plaintiff hereby incorporates by this reference paragraphs 1 through 71, above,
9 as though fully set forth at length herein.

10 73. **First**, the City's imposition of the RDP to the Piero II constituted a state action
11 in violation of Plaintiff's equal protection rights under *Cal. Const.*, Art. I §7. In
12 this regard, among other things, Plaintiff is informed and believes that
13 Defendant has granted other CCW area property development applicants
14 similarly situated to Plaintiff various modifications, waivers, agreements, and/or
15 incentives in conjunction with the application of the RDP to those applicants'
16 prospective developments. In this case and without any legitimate justification,
17 Defendant tried to force Plaintiff to comply with the strict letter of the RDP,
18 unmodified, even though no affordable housing units, or any other type of
19 housing units have been located or demolished from the property for over 16
20 years and that the property had been used as a parking lot at all relevant times
21 herein. There is no basis, rational or otherwise, for the City's Decision to try to
22 force Plaintiff to abide by restrictions not placed on similarly situated
23 landowners. Thus, Defendant has violated Plaintiff's equal protection rights
24 under *Cal. Const.*, Art. I §7 and have, without a rational basis, unreasonably and
25 arbitrarily applied the RDP to the Piero II while denying Plaintiff any of the
26 modifications, waivers or incentives offered to similarly situated landowners.

27 74. **Second**, in addition or in the alternative, the affordable housing burdens created
28 by the RDP are imposed on a singular, narrow and separate class of City

1 landowners, including Plaintiff, who happen to own property located inside the
 2 CCW sub-area. Plaintiff is informed and believes that no other sub-area of the
 3 City is subject to the RDP and no other sub-area's Specific Plan imposes
 4 affordable housing requirements similar to those contained in the RDP. In
 5 addition, the provisions of the RDP were adopted without adequate study,
 6 evaluation, findings, evidence or other consideration by Defendant sufficient to
 7 demonstrate any basis, rational or otherwise, for treating CCW area landowners
 8 and their properties, including Plaintiff, the Property and the Piero II, differently
 9 from similarly situated landowners and properties located in other sub-areas of
 10 the City. The problems proposed to be solved by enactment of the RDP, *inter*
 11 *alia*, the lack of affordable housing and the jobs-housing imbalance, are
 12 problems in virtually every sub-area of the City.

- 13 75. As a proximate result of the City's acts and omissions as alleged herein, the
 14 Piero II project and its financing have been delayed and prevented from moving
 15 forward and Plaintiff has suffered general, special, consequential, compensatory
 16 and/or incidental damages, including, but not limited to: losses due to a
 17 reduction in the fair market value of the Property and/or the Piero II project in
 18 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 19 amount of financing Palmer is able to obtain for the Property and/or the Piero
 20 II project due to the change in the credit and real estate markets that occurred
 21 during the period of delay caused by the City; the amount of additional interest
 22 on existing loans, real estate taxes and other carrying costs paid by Palmer
 23 during the period of delay caused by the City, in the millions of dollars;
 24 increased future costs of financing, in the tens of millions of dollars, including
 25 additional interest and other sums that will have to be paid because, among other
 26 things, during the period of delay, the credit and real estate markets have
 27 changed and financing cannot now be found on terms as advantageous as they
 28 were when Palmer could have moved forward with the Piero II project, but for

1 the acts and omissions of the City; lost opportunity and other costs, in the tens
 2 of millions of dollars, due to the fact that Palmer will now have to invest
 3 significantly more equity in the Piero II project because, during the period of
 4 delay caused by the City, among other things, the credit and real estate markets
 5 have changed such that loans for this type of project can only be obtained on
 6 significantly lower loan to value or cost ratios, requiring a much larger
 7 percentage of equity cushion and a much higher equity investment by Plaintiffs;
 8 loss of use; and loss of rental and other revenues and profits, in the tens of
 9 millions of dollars, all in an unascertained amount, according to proof.

10 76. Plaintiff has incurred and/or will incur attorney fees and other fees and costs
 11 because of this proceeding, which are recoverable.

SEVENTH CLAIM FOR RELIEF

(For Violation of Due Process (As Applied) Under the California Constitution (California Const., Art. I, §§7, 15) - As against all Named Defendants)

16 77. Plaintiff hereby incorporates by this reference paragraphs 1 through 76, above,
 17 as though fully set forth at length herein.

18 78. Defendant violated Plaintiff's due process rights under *Cal Const.*, Art. I, §§ 7,
 19 15 in that, among other things:

- 20 a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
 21 with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively capped
 22 the Piero II's allowable rents at a fixed rate with only limited increases
 23 and thus constituted an improper form of rent control;
- 24 b. Defendant has imposed the illegal rent controls contained in Section
 25 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et
 26 seq.*) on the Piero II without providing Plaintiff with any statutory or
 27 administrative structural features that safeguard against confiscatory
 28 results in applying such controls. Thus, the imposition of these provisions

- on the Property denied Plaintiff the ability to earn fair, just and reasonable returns on its investment. These provisions do not contain any mechanism or proviso designed to take into consideration, or make any adjustments for, the value of investments made by Plaintiff with respect to the Property, the amount of return Plaintiff needs to recoup this investment, and the per-unit operating income required by Plaintiff to adequately finance the development of the Piero II and/or as secure a fair, just and reasonable return on its investment;
- c. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II in a manner which left Plaintiff unprotected against, *inter alia*, the effects of inflation, anticipated or unanticipated increased operating costs, or anticipated or unanticipated capital expenditures;
- d. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) without providing Plaintiff with any mechanism for adjustments, abatements, exceptions or waivers therefrom even if Plaintiff had reasonable and legitimate reasons for said adjustments, abatements, exceptions or waivers; and/or
- e. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) without any basis, rational or otherwise, for forcing Plaintiff to accept initial base rents far below the market-value of those units and far below the initial base rents of similarly situated property owners subject to rent control within the City and County of Los Angeles.
79. Defendant had adjudicatory discretion to apply, modify, or waive provisions of the Specific Plan as they apply to property developments within the CCW area and had the discretion to approve or disapprove entitlement grants relating

1 thereto or to make the determination that they did not apply to a particular
 2 project.

3 80. As a proximate result of the City's acts and omissions as alleged herein, the
 4 Piero II project and its financing have been delayed and prevented from moving
 5 forward and Plaintiff has suffered general, special, consequential, compensatory
 6 and/or incidental damages, including, but not limited to: losses due to a
 7 reduction in the fair market value of the Property and/or the Piero II project in
 8 the tens of millions of dollars; a reduction of tens of millions of dollars in the
 9 amount of financing Palmer is able to obtain for the Property and/or the Piero
 10 II project due to the change in the credit and real estate markets that occurred
 11 during the period of delay caused by the City; the amount of additional interest
 12 on existing loans, real estate taxes and other carrying costs paid by Palmer
 13 during the period of delay caused by the City, in the millions of dollars;
 14 increased future costs of financing, in the tens of millions of dollars, including
 15 additional interest and other sums that will have to be paid because, among other
 16 things, during the period of delay, the credit and real estate markets have
 17 changed and financing cannot now be found on terms as advantageous as they
 18 were when Palmer could have moved forward with the Piero II project, but for
 19 the acts and omissions of the City; lost opportunity and other costs, in the tens
 20 of millions of dollars, due to the fact that Palmer will now have to invest
 21 significantly more equity in the Piero II project because, during the period of
 22 delay caused by the City, among other things, the credit and real estate markets
 23 have changed such that loans for this type of project can only be obtained on
 24 significantly lower loan to value or cost ratios, requiring a much larger
 25 percentage of equity cushion and a much higher equity investment by Plaintiffs;
 26 loss of use; and loss of rental and other revenues and profits, in the tens of
 27 millions of dollars, all in an unascertained amount, according to proof.
 28

- 1 81. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs
2 because of this proceeding, which are recoverable.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(For Breach of Written Contract**
5 **As against all Named Defendants)**

- 6 82. Plaintiff and Palmer hereby incorporate by this reference paragraphs 1
7 through 81, above, as though fully set forth at length herein.
8 83. On or about March 31, 2008, the City and Plaintiffs executed a Covenant and
9 Agreement, also referred to herein as the "Contract" (and attached hereto as
10 Exhibit "D") that was subsequently recorded in the Los Angeles County
11 Recorder's Office on or about April 4, 2008. The Contract contained adequate
12 consideration and obligated the City, among other things, to recommence in
13 good faith and continue the processing of all applications for building and other
14 permits and clearances for the Piero II project including shoring and excavation
15 permits and foundation only permits (collectively, the "Permits and
16 Applications"), and further obligated the City to process and treat Plaintiffs'
17 applications and requests for approval and permits in the same manner that is at
18 least as favorable and not more onerous than the manner in which other similar
19 projects in the City are processed and treated.
20 84. In breach of the Contract, among other things, the City has failed to process in
21 good faith all applications for building and other permits and clearances for the
22 Piero II project and/or failed to treat Plaintiffs' applications and requests for
23 approval and permits in the same manner that is at least as favorable and not
24 more onerous than the manner in which other similar projects in the City are
25 processed and treated. As part of the City's obligation to process the
26 Applications and Permits, there was an implied covenant that the City issue all
27 necessary permits in a timely manner, once Plaintiffs' Applications and Permits
28 had been processed (the "Implied Permit Issuance Covenant").

- 1 85. Plaintiffs have fully performed all of their obligations under the Contract except
2 for any of their obligations which may have been excused by the breach of the
3 City.
- 4 86. Plaintiffs at all times have been and still are ready, willing and able to perform
5 under the Contract. The City, on the other hand, at all relevant times herein, has
6 not been ready, willing and able to perform under the Contract.
- 7 87. The material breaches of the Defendant, as alleged herein, has proximately
8 caused, are causing and will continue to cause damage to the Plaintiffs. By
9 virtue of the foregoing, the Plaintiffs have suffered damages and injuries, justifying
10 an award of general, compensatory, incidental, consequential, special
11 damages and/or other damages, in an unascertained amount, according to proof,
12 but in excess of the minimum jurisdictional limits of this Court.
- 13 88. As a proximate result of the City's acts and omissions as alleged herein, the
14 Piero II project and its financing have been delayed and prevented from moving
15 forward and Plaintiff has suffered general, special, consequential, compensatory
16 and/or incidental damages, including, but not limited to: losses due to a
17 reduction in the fair market value of the Property and/or the Piero II project in
18 the tens of millions of dollars; a reduction of tens of millions of dollars in the
19 amount of financing Palmer is able to obtain for the Property and/or the Piero II
20 project due to the change in the credit and real estate markets that occurred
21 during the period of delay caused by the City; the amount of additional interest
22 on existing loans, real estate taxes and other carrying costs paid by Palmer
23 during the period of delay caused by the City, in the millions of dollars;
24 increased future costs of financing, in the tens of millions of dollars, including
25 additional interest and other sums that will have to be paid because, among other
26 things, during the period of delay, the credit and real estate markets have
27 changed and financing cannot now be found on terms as advantageous as they
28 were when Palmer could have moved forward with the Piero II project, but for

1 the acts and omissions of the City; lost opportunity and other costs, in the tens
2 of millions of dollars, due to the fact that Palmer will now have to invest
3 significantly more equity in the Piero II project because, during the period of
4 delay caused by the City, among other things, the credit and real estate markets
5 have changed such that loans for this type of project can only be obtained on
6 significantly lower loan to value or cost ratios, requiring a much larger
7 percentage of equity cushion and a much higher equity investment by Plaintiffs;
8 loss of use; and loss of rental and other revenues and profits, in the tens of
9 millions of dollars, all in an unascertained amount, according to proof.

10 89. In addition and/or in the alternative, Plaintiff are entitled to injunctive relief
11 and/or a decree of specific performance, including, but not limited to, the
12 following:

- 13 a. commanding, ordering, instructing and/or mandating that the City comply
14 with all terms of the Contract contained herein;
- 15 b. commanding, instructing and/or mandating that the City recommence and
16 continue in good faith the processing of all applications for building and
17 other permits and clearances for the Piero II project including shoring and
18 excavation permits and foundation only permits, and further ordering the
19 City to process and treat Plaintiffs' applications and requests for approval
20 and permits in the same manner that is at least as favorable and not more
21 onerous than the manner in which other similar projects in the City are
22 processed and treated;
- 23 c. ordering the City to issue all such permits once all applicable
24 requirements have been met; and
- 25 d. injunctive relief proscribing and enjoining the City from continuing to
26 violate Plaintiff's constitutional rights in the manner described herein
27 and/or from taking or causing to be taken any actions which would
28

1 interfere with Plaintiffs' Permits and Applications for the Piero II project,
 2 and from proceeding with and completing said project.

3 **NINTH CLAIM FOR RELIEF**

4 **(For Breach of the Covenant of Good Faith and Fair Dealing
 5 As against all Named Defendants)**

- 6 90. Plaintiff and Palmer hereby incorporate by this reference paragraphs 1 through
 7 89, above, as though fully set forth at length herein.
- 8 91. In every contract governed by the laws of the State of California there exists an
 9 implied covenant of good faith and fair dealing.
- 10 92. The aforementioned Contract was entered into and executed in the State of
 11 California, was performed or to be performed in the State of California and is
 12 governed by the laws of the State of California.
- 13 93. Within the last year and/or within the year prior to the filing of the Complaint,
 14 Plaintiffs discovered that the City breached the covenant of good faith and fair
 15 dealing in the Contract thereby depriving Plaintiffs of the benefit of the bargain,
 16 by, among other things, breaching the Implied Permit Issuance Covenant, failing
 17 to recommence and continue in good faith the processing of all applications for
 18 building and other permits and clearances for the Piero II project and/or failing
 19 to process and treat Plaintiffs' applications and requests for approval and permits
 20 in the same manner that is at least as favorable and not more onerous than the
 21 manner in which other similar projects in the City are processed and treated.
- 22 94. The actions of the City that constitute the breach of the covenant of good faith
 23 and fair dealing were intentionally taken by the City in a direct response to
 24 Plaintiffs' legal challenges to the illegal imposition of the RDP by the City. The
 25 City made an intentional decision to take such actions in order to keep and
 26 maintain pressure on Plaintiffs to not continue with or change its conduct in
 27 litigation against the City and not attempt to invalidate the illegal imposition of
 28 the RDP on the City.

- 1 95. As a proximate result of the City's acts and omissions as alleged herein, the
2 Piero II project and its financing have been delayed and prevented from moving
3 forward and Plaintiff has suffered general, special, consequential, compensatory
4 and/or incidental damages, including, but not limited to: losses due to a
5 reduction in the fair market value of the Property and/or the Piero II project in
6 the tens of millions of dollars; a reduction of tens of millions of dollars in the
7 amount of financing Palmer is able to obtain for the Property and/or the Piero II
8 project due to the change in the credit and real estate markets that occurred
9 during the period of delay caused by the City; the amount of additional interest
10 on existing loans, real estate taxes and other carrying costs paid by Palmer
11 during the period of delay caused by the City, in the millions of dollars;
12 increased future costs of financing, in the tens of millions of dollars, including
13 additional interest and other sums that will have to be paid because, among other
14 things, during the period of delay, the credit and real estate markets have
15 changed and financing cannot now be found on terms as advantageous as they
16 were when Palmer could have moved forward with the Piero II project, but for
17 the acts and omissions of the City; lost opportunity and other costs, in the tens
18 of millions of dollars, due to the fact that Palmer will now have to invest
19 significantly more equity in the Piero II project because, during the period of
20 delay caused by the City, among other things, the credit and real estate markets
21 have changed such that loans for this type of project can only be obtained on
22 significantly lower loan to value or cost ratios, requiring a much larger
23 percentage of equity cushion and a much higher equity investment by Plaintiffs;
24 loss of use; and loss of rental and other revenues and profits, in the tens of
25 millions of dollars, all in an unascertained amount, according to proof.
- 26 96. In addition and/or in the alternative, Plaintiff are entitled to injunctive relief
27 and/or a decree of specific performance, including, but not limited to, the
28 following:

- 1 a. commanding, ordering, instructing and/or mandating that the City comply
2 with all terms of the Contract described herein;
- 3 b. commanding, instructing and/or mandating that the City recommence and
4 continue in good faith the processing of all applications for building and
5 other permits and clearances for the Piero II project including shoring and
6 excavation permits and foundation only permits, and further ordering the
7 City to process and treat Plaintiffs' applications and requests for approval
8 and permits in the same manner that is at least as favorable and not more
9 onerous than the manner in which other similar projects in the City are
10 processed and treated;
- 11 c. ordering the City to issue all such permits once all applicable
12 requirements have been met; and
- 13 d. injunctive relief proscribing and enjoining the City from continuing to
14 violate Plaintiff's constitutional rights in the manner described herein
15 and/or from taking or causing to be taken any actions which would
16 interfere with Plaintiffs' Permits and Applications for the Piero II project,
17 and from proceeding with and completing said project.

PRAYER FOR RELIEF

19 **WHEREFORE**, Plaintiffs, and each of them or either of them, as appropriate,
20 under applicable law, hereby pray for relief against Defendant, as follows:

21 **On the First through the Seventh Claims for Relief:**

22 A. For declaratory relief whereby, in essence, the Court declares the manner
23 and extent to which Defendant has violated the constitutional rights of the Plaintiffs,
24 or either of them, under the United States Constitution and/or the California
25 Constitution;

26 B. That Plaintiffs have and recover their attorney's fees and costs of suit
27 herein, in the manner and to the extent provided for by applicable law, including, but
28

1 not limited to, pursuant to 42 U.S.C. § 1988(b) and California Code of Civil Procedure
 2 §1036;

3 **On the Eighth and Ninth Claims for Relief:**

4 C. For injunctive relief and/or a decree of specific performance commanding,
 5 ordering, instructing and/or mandating that the City comply with all terms of the
 6 Contract described herein;

7 **On All Claims for Relief:**

8 D. As a proximate result of the City's acts and omissions as alleged herein,
 9 the Piero II project and its financing have been delayed and prevented from moving
 10 forward and Plaintiff has suffered general, special, consequential, compensatory and/or
 11 incidental damages, including, but not limited to: losses due to a reduction in the fair
 12 market value of the Property and/or the Piero II project in the tens of millions of
 13 dollars; a reduction of tens of millions of dollars in the amount of financing Palmer is
 14 able to obtain for the Property and/or the Piero II project due to the change in the credit
 15 and real estate markets that occurred during the period of delay caused by the City; the
 16 amount of additional interest on existing loans, real estate taxes and other carrying
 17 costs paid by Palmer during the period of delay caused by the City, in the millions of
 18 dollars; increased future costs of financing, in the tens of millions of dollars, including
 19 additional interest and other sums that will have to be paid because, among other
 20 things, during the period of delay, the credit and real estate markets have changed and
 21 financing cannot now be found on terms as advantageous as they were when Palmer
 22 could have moved forward with the Piero II project, but for the acts and omissions of
 23 the City; lost opportunity and other costs, in the tens of millions of dollars, due to the
 24 fact that Palmer will now have to invest significantly more equity in the Piero II project
 25 because, during the period of delay caused by the City, among other things, the credit
 26 and real estate markets have changed such that loans for this type of project can only
 27 be obtained on significantly lower loan to value or cost ratios, requiring a much larger
 28 percentage of equity cushion and a much higher equity investment by Plaintiffs; loss

1 of use; and loss of rental and other revenues and profits, in the tens of millions of
2 dollars, all in an unascertained amount, according to proof.

3 E. For injunctive relief and/or a decree of specific performance, including,
4 but not limited to, the following:

5 1. commanding, instructing and/or mandating that the City
6 recommence and continue in good faith the processing of all applications for building
7 and other permits and clearances for the Piero II project including shoring and
8 excavation permits and foundation only permits, and further ordering the City to
9 process and treat Plaintiffs' applications and requests for approval and permits in the
10 same manner that is at least as favorable and not more onerous than the manner in
11 which other similar projects in the City are processed and treated;

12 2. ordering the City to issue all such permits once all applicable
13 requirements have been met; and

14 3. injunctive relief proscribing and enjoining the City from continuing
15 to violate Plaintiff's constitutional rights in the manner described herein and/or from
16 taking or causing to be taken any actions which would interfere with Plaintiffs' Permits
17 and Applications for the Piero II project, and from proceeding with and completing said
18 project; and

19 F. That Plaintiffs have and recover such other and further relief as the Court
20 deems just and proper.

21
22 DATED: January 4, 2010 COSTELL & CORNELIUS LAW CORPORATION

23
24 By: 
25

26 Jeffrey Lee Costell, Esq.
27 Attorneys for Plaintiffs Palmer/Sixth Street Properties,
28 L.P., a California Limited Partnership, and Geoffrey
Palmer